

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

FRANCHISE GROUP, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-12480 (JTD)

(Jointly Administered)

**RESPONSE OF ARIZONA NUTRITIONAL SUPPLEMENTS TO NOTICE
OF POSSIBLE ASSUMPTION AND ASSIGNMENT AND CURE COSTS WITH
RESPECT TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Arizona Nutritional Supplements (“ANS”) by and through its undersigned attorneys, files this Response (the “Response”) to the Debtors’ *Notice of Possible Assumption and Assignment and Cure Costs with Respect to Executory Contracts and Unexpired Leases* [Docket No. 487] (the “Cure Schedule”). In further support hereof, ANS respectfully states as follows:

BACKGROUND

1. On November 3, 2024, Franchise Group, Inc. and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy”

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of their U.S. federal tax identification numbers, to the extent applicable, are Franchise Group, Inc. (1876), Freedom VCM Holdings, LLC (1225), Freedom VCM Interco Holdings, Inc. (2436), Freedom Receivables II, LLC (4066), Freedom VCM Receivables, Inc. (0028), Freedom VCM Interco, Inc. (3661), Freedom VCM, Inc. (3091), Franchise Group New Holdco, LLC (0444), American Freight FFO, LLC (5743), Franchise Group Acquisition TM, LLC (3068), Franchise Group Intermediate Holdco, LLC (1587), Franchise Group Intermediate L, LLC (9486), Franchise Group Newco Intermediate AF, LLC (8288), American Freight Group, LLC (2066), American Freight Holdings, LLC (8271), American Freight, LLC (5940), American Freight Management Company, LLC (1215), Franchise Group Intermediate S, LLC (5408), Franchise Group Newco S, LLC (1814), American Freight Franchising, LLC (1353), Home & Appliance Outlet, LLC (n/a), American Freight Outlet Stores, LLC (9573), American Freight Franchisor, LLC (2123), Franchise Group Intermediate B, LLC (7836), Buddy's Newco, LLC (5404), Buddy's Franchising and Licensing LLC (9968), Franchise Group Intermediate V, LLC (5958), Franchise Group Newco V, LLC (9746), Franchise Group Intermediate BHF, LLC (8260); Franchise Group Newco BHF, LLC (4123); Valor Acquisition, LLC (3490), Vitamin Shoppe Industries LLC (3785), Vitamin Shoppe Global, LLC (1168), Vitamin Shoppe Mariner, LLC (6298), Vitamin Shoppe Procurement Services, LLC (8021), Vitamin Shoppe Franchising, LLC (8271), Vitamin Shoppe Florida, LLC (6590), Betancourt Sports Nutrition, LLC (0470), Franchise Group Intermediate PSP, LLC (5965), Franchise Group Newco PSP, LLC (2323), PSP Midco, LLC (6507), Pet Supplies “Plus”, LLC (5852), PSP Group, LLC (5944), PSP Service Newco, LLC (6414), WNW Franchising, LLC (9398), WNW Stores, LLC (n/a), PSP Stores, LLC (9049), PSP Franchising, LLC (4978), PSP Subco, LLC (6489), PSP Distribution, LLC (5242), Franchise Group Intermediate SL, LLC (2695), Franchise Group Newco SL, LLC (7697), and Educate, Inc. (5722). The Debtors’ headquarters is located at 109 Innovation Court, Suite J, Delaware, Ohio 43015.

Code”). The Debtors continue to operate their businesses and manage their affairs as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. The Debtors and ANS are parties to various agreements (the “Contracts”). The Debtors have identified the following proposed cure amounts for the Contracts:

Counterparty	Debtor Entity	Agreement	Estimated Cure
Arizona Nutritional Supplements	Vitamin Shoppe Global, LLC	Private Label Contract Manufacturers Supply Standards	\$0.00
Arizona Nutritional Supplements LLC	Vitamin Shoppe Procurement Services, LLC	Manufacturer Proprietary Ingredient Agreement	\$0.00
Arizona Nutritional Supplements LLC	Vitamin Shoppe Industries LLC	Proprietary Ingredient Agreement	\$0.00
Arizona Nutritional Supplements, Inc.	Vitamin Shoppe Industries LLC	Vitamin Shoppe Private Label Manufacturing And Supply Agreement	\$0.00
Arizona Nutritional Supplements, LLC	Vitamin Shoppe Procurement Services, LLC	Amended and Restated Private Label Manufacturing and Supply Agreement	\$0.00

RESPONSE

5. Section 365(a) of the Bankruptcy Code empowers a debtor to assume or reject an unexpired lease. Pursuant to section 365(f)(2)(A) of the Bankruptcy Code, the trustee or debtor-in-possession may assign an unexpired lease of the debtor only if the trustee or debtor-in-possession assumes such contract or lease in accordance with the provisions of section 365 of the Bankruptcy Code. 11 U.S.C. § 365(f)(2)(A).

6. Section 365(b)(1) of the Bankruptcy Code provides:

If there has been a default in an executory contract or unexpired lease of the debtor, the

trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default...;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

7. The Debtors may not assume or assign the Contracts pursuant to sections 365(f)(2)(A) and 365(b)(1) of the Bankruptcy Code unless the Debtors cure and compensate, or provide adequate assurances that they will promptly compensate, ANS for its actual pecuniary losses suffered as a result of the Debtors’ defaults under the Contracts. See In re Rickel Home Centers, Inc., 209 F.3d 291, 298 (3d Cir. 2000), cert. denied, 531 U.S. 873 (2000) (noting that trustee must satisfy requirement of cure or adequate assurance of prompt cure before he may assume a contract or lease).

8. Cure or the provision of adequate assurance of a prompt cure is a prerequisite to the ability of a trustee to assume and assign a contract or lease. See In re Superior Toy & Manuf. Co., Inc., 78 F.3d 1169, 1174 (7th Cir. 1996) (interpreting language of Section 365(b)(1) to unequivocally mean that “[a] party to an executory contract must be paid all amounts due him under the contract before the contract may be assumed”); In re PRK Enterprises, Inc., 235 B.R. 597, 602 (Bankr. E.D. Tex. 1999) (holding that cure or adequate assurance that prompt cure will be made is a “prerequisite to assumption”).

9. While the Debtors are current with respect to any pre-petition amounts owed to ANS, as of the date hereof, ANS is owed approximately \$3.9 million on a post-petition basis as detailed in Exhibit A hereto.

10. While ANS anticipates that these and any other amounts due will be or continue to be paid in the ordinary course of business, it files the instant Response out of an abundance of caution. ANS further reserves all rights to amend or supplement this Response and/or file a proof of claim and/or motion for allowance and payment of an administrative expense as may become appropriate.

CONCLUSION

WHEREFORE, for the reasons set forth herein, ANS objects to the Cure Schedule as it applies to ANS and respectfully requests that the Court enter an order: (i) setting the correct cure amounts owed to ANS as set forth herein; and (ii) granting such other relief as is just and appropriate.

Dated: January 3, 2025

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